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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/848,929	05/18/2004	Ray Winston Freeman JR.	1029-358-CIP	5694
22442	7590	03/08/2006	EXAMINER	
SHERIDAN ROSS PC			O CONNOR, CARY E	
1560 BROADWAY				
SUITE 1200			ART UNIT	PAPER NUMBER
DENVER, CO 80202			3732	

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/848,929	FREEMAN ET AL
Examiner	Art Unit	
Cary E. O'Connor	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 01 September 2004.  
2a)  This action is FINAL. 2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-16 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 18 May 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6-28-04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19 and 27 of U.S. Patent No. 6,846,178 in view of Franseen et al (5,470,228). The patented claims do not specify the specific structure of the bracket as claimed in the instant application. Franseen shows a number of different embodiments of brackets corresponding to the claimed structure. Figures 1A-1C corresponds to the structure set forth in claims 1-6, such as the tie wings, center leg, notches and elliptical configuration. Figure 4D shows structure corresponding to the structure set forth in claims 7-11, i.e. the trapazoidal configuration, and Figure 5B and 6B show structure corresponding to the structure set forth in claims 12-16, namely the convex portions 44 extending labially from the archwire floor. It would have been obvious to use the brackets shown by Franseen with a base as claimed in the patent, depending on the requirements of the patient.

Claims 1, 2, 4-7, 9-11, 14-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 32 of U.S. Patent No. 6,846,178 in view of Franseen et al (5,470,288). The patented claims do not specify the specific structure of the bracket as claimed in the instant application. Franseen shows a number of different embodiments of brackets corresponding to the claimed structure. Figures 1A-1C corresponds to the structure set forth in claims 1-6, such as the tie wings, center leg, notches and elliptical configuration. Figure 4D shows structure corresponding to the structure set forth in claims 7-11, i.e. the trapaziodal configuration, and Figure 5B and 6B show structure corresponding to the structure set forth in claims 12-16, namely the convex portions 44 extending labially from the archwire floor. It would have been obvious to use the brackets shown by Franseen with a base as claimed in the patent, depending on the requirements of the patient.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 6, 7, 9, 11, 12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franseen et al (5,470.228) in view of Andreiko et al (5,622,494) and JP 11-27650. Franseen shows a number of different embodiments of brackets corresponding to the claimed structure. Figures 1A-1C corresponds to the structure set forth in claims 1-6, such as the tie wings, center leg, notches and elliptical

configuration. Figure 4D shows structure corresponding to the structure set forth in claims 7-11, i.e. the trapazoidal configuration, and Figure 5B and 6B show structure corresponding to the structure set forth in claims 12-16, namely the convex portions 44 extending labially from the archwire floor. Franseen does not disclose a base having a substantially continuous pattern of characters and intermediate space and including a discontinuous perimeter rail. Andreiko shows an orthodontic bracket 10 comprising a body 12 and a base 110 connected to the body. The base includes an exterior surface 114 which includes a substantially continuous pattern of characters 199 and intermediate spaces. JP 11-276504 shows an orthodontic bracket comprising a body 2 and a base 1 connected to the body. The base includes an exterior surface having a discontinuous perimeter rail having a perimeter length and at least one cavity along its length (see Figs. 3 and 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the base of Franseen with a substantially continuous pattern of characters and intermediate space and a discontinuous perimeter rail, in view of Andreiko and JP 11-27650, in order to increase the bond strength of the bracket.

***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 72 (Figure 1B).

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 571-272-4715. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cary E. O'Connor  
Primary Examiner  
Art Unit 3732

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